

A4E'S FEEDBACK TO EC'S FITNESS CHECK OF EU AIRPORT LEGISLATION

Introduction

This paper sets out Airlines for Europe (A4E)'s feedback to the European Commission's fitness check of EU airport legislation.

The single market for aviation is one of the most significant achievements of the EU. Since the liberalisation of the sector, airline competition has flourished, giving consumers access to lower fares and more destinations than ever before. Strong competition among airlines has been critical to bringing citizens and businesses closer together.

Aviation has been at the heart of European integration: the free movement of people and goods. It supports 12 million jobs in the EU, which is about 1% of total jobs, both direct and indirect while also making up over 4% of EU GDP¹. It is also a crucial enabler of Europe's tourism industry, which accounts for 10% of the continent's GDP².

Competitiveness is critically important as European aviation faces up to the challenges of decarbonisation and globalisation. The EU has higher consumer, social and sustainability standards than any other region in the world, standards that A4E fully supports.

The changing context (e.g. COVID-19; Russia's aggression against Ukraine) and evolving political priorities (e.g. the European Green Deal), have put additional pressure on the partially outdated and inadequate body of EU law on airports.

EU airport legislation should be able to contribute to an efficient and competitive EU-wide market for airport services. We need to use airport capacity as efficiently as possible and this can be done through a coherent and effective regulatory framework across all the EU that is able to tackle barriers to market entry and market power.

At present, there are still significant differences in how airport charges and ground handling services are regulated between Member States, confirming the lack of harmonisation and fragmentation in the market for airport services and how they are regulated across Europe.

It is important to recognise that airport charges and ground handling have several obvious interdependencies (e.g. central infrastructure) and are local in nature. However, the Slot Regulation has no direct interdependencies with airport charges or groundhandling. The only link that exists between the

¹ IMF, 2019; Eurostat, 2019; Aviation Round Table, 2020; Destination 2050 A Route To Net Zero European Aviation, 2021.

² European Parliament, Factsheet on Tourism, 2024.

two is related to the overall capacity of an airport (incl. staff shortages of the airport and/or groundhandling providers) effecting whether a slot is available.

Establishing a relationship between slot allocation and airport charges and groundhandling could further entrench the power of airports which ultimately could negatively impact consumers.

I. Tackling airport market power and facilitating competition and a level playing field between airports

A4E seeks to achieve reasonable airport charges as the basis for EU aviation competitiveness. In order to do so, airports, airport networks and airports with common charging schemes in the EU must be effectively regulated, passengers must receive the full benefit of the non-aeronautical revenues which they generate at airports, and charges must be cost-related, cost-efficient, non-discriminatory and quality-related.

A4E has been calling for many years for a more effective regulation of monopoly airports through a **reform of the EU Airport Charges Directive 2009/12/EC (ACD), changing it into a Regulation and also including as part of regulated charges, the central infrastructure of an airport.**

A4E believes that in its current state, the ACD remains inadequate and ineffective as it only deals with the procedural aspects for setting airport charges and does not protect airlines and their passengers from airports abusing their market power. Indeed, the ACD does not provide for any regulation that replicates the effects of competition, and it has failed to provide a framework to prevent excessive charging and excess profitability.

There are structural issues which persist, namely:

- a) **the absence of any specific measures** in the ACD to tackle the possible misuse of airports with **significant market power**;
- b) **the lack of a clear mandate or sufficient powers for national independent supervisory authorities**; and
- c) the considerable **divergence in how charges are set across different Member States.**

As confirmed by the EC's study on the impact of COVID-19 on the aviation market³, regulatory intervention on airport charges remains as relevant as before the crisis. The main conclusions of the EC's 2019 evaluation of the ACD⁴ still hold, i.e. that there is limited competition among larger EU airports, which gives them significant market power vis-à-vis airlines, and which in turn allows them to obtain terms and prices that they would not get in a competitive market.

³ European Commission, Study on the impacts of the COVID-19 pandemic on the aviation market, 2022.

⁴ Commission Staff Working Document, Evaluation of the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, 2019.

A4E is asking for regulators to be given the tools they need to ensure that airport charges are fair and to prevent monopolistic behavior. A reform of the ACD will support a competitive and efficient EU aviation market to the ultimate benefit of consumers. We need common rules and less fragmentation in the single market, as noted by the former Italian Prime Minister Enrico Letta's report on the Future of the Single Market⁵.

A4E believes that **strong, robust, independent and effective economic regulation on the basis of a single till principle is needed** where airports enjoy significant market power and abuse it by arbitrarily applying a dual till principle.

The single till principle requires profits from an airport's non-aeronautical activities (e.g. passenger induced revenues from car parking, restaurants, etc.) be deducted from the airport's revenue requirement for aeronautical services before determining the level of airport charges. This is how competitive markets price and operate, as recognised by the EU's State Aid guidelines⁶. Single till is supported by regulators across Europe, such as the Irish Commission for Aviation Regulation⁷ and the UK Competition Commission, as well as by national authorities such as the French Cour des comptes⁸ and the Swiss Surveillant des prix⁹. The single till approach contrasts with the dual till principle in which only aeronautical activities are taken into account when setting airport charges.

Single till is the only way to effectively determine the cost base for airport charges and hence it is essential it is included in the ACD. Economic regulation should indeed mimic normal market behavior, and single till is the best mechanism to produce charges that are close to the competitive outcome¹⁰. The ACD should therefore be reformed in order to guarantee that airports that fall under its scope apply single till.

The fitness check is also timely considering expected present and future investments by airports in measures and infrastructure to reduce the climate impact of aviation. A4E Members are committed to reaching net-zero CO2 emissions and are already making significant investments in this regard, including €14.8 bn in sustainable aviation fuels (SAFs) and €165 bn in new aircraft by 2030.

Given the large sums needed to finance the green transition of the aviation industry, we need to make sure the funds are well spent on projects that will be effective. **Airport investments in green solutions and technologies should be subject to the same requirements as other airport investments**, including detailed consultation with airport users based on transparent financial information and a solid business case. This is another important reason why the ACD needs to be reformed.

⁵ Enrico Letta, Much more than a market – Speed, Security, Solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, 2024.

⁶ European Commission, Guidelines on State aid to airport and airlines, 2014 /C 99/03, paragraph 64.

⁷ Commission for Aviation Regulation, Submission to the Public Consultation on the Review of Airport Charges in Ireland, 16 September 2016; see also, Indecon, Report on the Review of the Regulatory Regime for Airport Charges in Ireland, 11 March 2016.

⁸ Cour des comptes, L'Etat et la compétitivité du transport aérien, Communication à la commission des finances du Sénat, Septembre 2016.

⁹ Surveillant des prix, Recommandations au Conseil fédéral concernant la révision de l'Ordonnance sur les redevances des aéroports, 2016.

¹⁰ CEG, Competition Disputes Regulation, Effective regulation of airport market power, 2018.

There needs to be more scrutiny by strong, independent regulators of airport costs and investments to ensure that the money is well spent, that charges are reasonable, and ultimately that the cost of air travel in Europe remains affordable for customers.

II. Ensuring efficient use and pricing of ground handling services

The EU Ground Handling Council Directive 96/67/EC (GHD) in its current state has not achieved effective and fair competition in the provision of ground handling services in Europe. The Directive has not provided a framework that enables real and fair competition in the market, which is necessary to protect airport users and consumers from continued high costs and poor levels of service quality. It has left too much discretion to airports to set artificial limits for the number of handlers even in cases in which the airport is a competitor.

Artificial barriers to entry in the ground handling market, or unfair costs for market access and participation limit competition and constrain the ability of airlines to operate efficiently while restricting the ability of passengers to benefit from high-quality services in aviation.

Some of the key issues have not changed noticeably in the past two decades, such as artificial restrictions on the maximum number of handlers at some airports which are not based on objective criteria or airport users having limited or insufficient ability to select a handler of their choice (including self-handling). Political or airport ownership considerations should not have a bearing on the number of ground handlers at a given airport.

In general, A4E believes the EU should seek to:

- a) **Tackle barriers to market entry.** While the objectives of the Directive were well-intended, it has generated limited benefits. Competition to provide GH services remains limited in most EU Member States. There is an inherent contradiction between the Directive's general aim of more efficient GH services across the EU (in terms of costs and quality) and the possibility for Member States or airport operators to maintain barriers to entry in local/national markets. This possibility was intended to be temporary, but restrictions are still largely in place across the EU more than 20 years later. With some exceptions, markets that were intended to be liberalised have been shielded from competition.

There will be new EASA ground handling regulation entering into force which might have effects on the competitive situation as well and ideally should contribute to opening up the market to the largest extent possible unless there are limitations arising from actual physical constraints that would limit this.

- b) **Strengthen the role of airport users** or directly give them a say (including any limitations or exemptions to the level of services provided). Consultations between airports and users are characterised by asymmetries of information and bargaining power in favour of airports. In many cases, Airport User Committees (AUC) are merely informed about the process and outcome of selection procedures and given only limited information.

- c) **Promote a more (cost-) efficient system.** The issue of service quality should be left to the market and agreements between suppliers and customers. Service providers that do not meet the requirements or expectations of customers would normally face the prospect of having to offer some form of compensation or even a termination of services if they fail to deliver adequate quality. This would be expected in liberalised markets and hence goes back to the question of market entry barriers and restrictions on competition in GH markets.
- d) **Ensure a level playing field for all types of handlers.** Several provisions of the Directive, taken together, ensure that airport-owned handlers as well as centralized infrastructures under article 8 are exempted from a selection procedure or tender, and consequently are not subject to the 7-year license period in the same way that other handlers are¹¹. Such airport-owned handlers are exposed to weak competition, or in the case of centralized infrastructures are given a legal monopoly, and are not incentivised to become more efficient. They should therefore be subject to a selection procedure and be treated in the same way as any other handler.
- e) **Recognise that airlines or airline groups under the same ownership can obtain self-handling licenses** and have the right to service other airlines with marginal capacity. For the avoidance of doubt, any self-handling airline or airline groups should not in principle count towards any restrictions on third-party handling agents at a given airport. As a minimum, Member States should be required to justify any restrictions on self-handling in the same way that exemptions under Article 9 of the GHD are justified. From a competition perspective, the right to self-handle should not be restricted or subject to a tender in general. Carriers are best placed to assess the cost and quality of their product in relation to other services and should therefore have the right decide whether to self-handle or to contract a third-party provider.

III. Ensuring efficient use of available airport capacity with Slot Regulation

A4E believes the **Slot Regulation (EEC) No 95/93 largely serves its purpose**¹². Despite the significant market developments in the past decades, the Regulation has supported an increase in routes, connectivity, traffic and passenger volumes over many years.

Scarce airport capacity and congestion are significant concerns for the industry, but the framework has nevertheless supported a competitive EU aviation market in recent decades which has been able to meet demand for air travel.

Slot coordination can help to mitigate the effects of scarce capacity, and make the best of use of available capacity, but it cannot tackle the need for additional capacity. Despite the significant market developments

¹¹ For example, Article 11(2) of the Directive grants airports the right to perform services in restricted markets without the need for a selection procedure, irrespective of the airport's experience with the provision of such services.

¹² Please note that one of A4E's members, Ryanair, does not share the same position on the Slot Regulation (EEC) No 95/93 and that they will provide their views separately.

since the Regulation was introduced, the rules have been able to accommodate growth, new entrants and higher passenger volumes.

A4E sees primary value in the consistent application and enforcement of the current rules in a harmonised manner across the EU. However, there are certain **areas where improvements could be made to support the efficient use of airport capacity**, through e.g. guidelines, such as:

- a) **transparency** (e.g. use of coordinator websites or online portals to provide up-to-date information on slot availability and airport capacity);
- b) **the capacity declaration process and determination of coordination parameters** (e.g. requiring regular and effective capacity analysis including the airport's ability to deliver the declared capacity); and
- c) **the functioning of coordination committees** (e.g. mandatory requirements on transparency and working methods).

In addition, it would be important to **align the EU framework with the updated Worldwide Airport Slot Guidelines (WASG)**, which address some of the Commission's objectives. The WASG include a revised new entrant definition which provides greater access than the current EU framework, an enhanced slot monitoring process, and additional allocation criteria which provide an important balance between different considerations (e.g. type of service and market served, competition, connectivity and environment).

It is important to maintain a balance between (i) providing priority access for new entrants and enabling their ability to grow and compete with other carriers, and (ii) ensuring stability of operations for carriers that are already present at congested airports to enable them to invest and grow.

Finally, during the COVID-19 pandemic it was evident that there is a lack of an appropriate permanent **flexibility mechanism in the current Regulation which would ensure that airlines can navigate challenging scenarios and one-off events**. A reasonable "Justified Non-Use of Slots" policy including a flexibility mechanism for unpreventable situation which is outside the control of airlines should be assessed.